

NTSB Order No.
EM-46

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D. C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D. C.
on the 10th day of September 1975.

O. W. Siler, Commandant, United States Coast Guard,

vs.

THOMAS S. NORTHCUTT, Appellant.

Docket ME-45

ORDER DISMISSING APPEAL

The decision of the Commandant in Appeal No. 1841 was issued on June 7, 1971, sustaining the revocation of appellant's merchant mariner's document (No. Z-251760-D1) for misconduct aboard ship.¹

By letter dated May 2, 1975, appellant filed a notice of appeal from Decision No. 1841 with this Board. Counsel for the Commandant thereafter moved to dismiss the appeal as untimely filed. To date, appellant has not answered the motion, served June 16, 1975.

From our examination of the record, it appears that the Commandant's decision was mailed to appellant on the date following its issuance, and that he signed a Coast Guard form acknowledging its receipt on August 19, 1971. It further appears that the decision's covering letter informed appellant that he had the right of further appeal to this Board, and enclosed a copy of the Board's rules of procedure governing seaman's appeals.²

¹It was found therein that appellant, employed as an oiler aboard the SS MARYLAND TRADER, wrongfully had possession of a .38 caliber gun, and that he shot a fellow crewmember in the groin with the said weapon during a dispute arising when they were exchanging the engineroom watch, on March 2, 1970, at the port of Guayanilla, Puerto Rico.

²At that time, the rules were codified in 14 CFR Part 425. Subsequently, on June 17, 1975, all Board regulations were transferred to Title 49, Chapter VIII of Code of Federal Regulations ; and the rules for seaman's appeals are now codified

Under the applicable rule, the filing of appellant's notice of appeal to the Board was required "within 10 days after service of the Commandant's decision...."³ Appellant states in his letter that he did not understand the 10-day time limit. However, this cannot excuse his inaction for an additional 3 years and some 8 months, as established by the above record, before filing the notice herein.

Another statement in appellant's letter indicates that his appeal is prompted by the Coast Guard's denial, on February 13, 1975, of his application for a new merchant mariner's document. The denial action at that stage did not effectively resurrect the right of direct appeal long since waived by appellant, and we so hold. As to the merits of the denial action, we have no hesitancy in concluding that the Coast Guard properly exercised its discretion.⁴

Finally, appellant states that he was "In Hospital. 1970 - To Date." This bare allegation tells us nothing which would account for or excuse the prolonged delay in instituting this appeal, absent a showing that he was seriously incapacitated mentally or physically during the years of hospitalization. The record before us contains no such showing.

The record however, does disclose that appellant received standardized instructions for appealing to this Board. He has shown no good cause for the excessive lateness of his appeal,⁵ which is therefore subject to dismissal on the Commandant's motion.

ACCORDINGLY, IT IS ORDERED THAT:

at 49 CFR Part 825, See, 40 Fed. Reg. 30232, 30248-9.

³14 CFR 425.5

⁴The record clearly establishes that appellant's act of violence in shooting another seaman aboard ship was without sufficient provocation. In view of his demonstrated propensity for using a gun to settle disputes, the reinstatement of appellant's status as a seaman would represent a constant threat to others aboard ships on which he might then serve.

⁵The Board's rules require a showing of good cause for any extension of time in the filing of a notice of appeal. See also, 73 C.J.S. Public Administrative Bodies and Procedure § 159(a), p. 498 Jennings v. Smith, 280 F. Supp. 1022 (S.D. New York, 1967).

1. The Commandant's motion be and it hereby is granted; and

2. Appellant's appeal be and it hereby is dismissed.

REED, Chairman, McADAMS, THAYER, BURGESS, and HALEY, Members of the Board, concurred in the above order.

(SEAL)